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Manager, Philanthropy and Exemptions Unit
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The Treasury
Langton Crescent
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By email: NFPReform@treasury.gov.au

Dear Sir

Consultation Paper: Review of not-for-profit governance arrangements

RSM Bird Cameron appreciates the opportunity to make this submission to Treasury as part of the process of public consultation on an exposure draft of legislation to establish the Australian Charities and Not-for-profits Commission (ACNC) ("the proposed legislation").

Whilst we firmly support measures to reform the not-for-profit sector, including the establishment of the ACNC, we do have some concerns with the proposals in the exposure draft and other consultation documents issued at or about the same time, being the consultation paper regarding governance arrangements and the consultation paper on implementation design.

Our primary concern is with the implementation date of the proposed legislation of 1 July 2012. Whilst we understand this is required for the ACNC to be operational from that date, we do not believe that this should also be the start date for the reporting and audit requirements under the legislation. Our reason for this is that it gives not-for-profit entities little time to consider the affects of the draft legislation and to implement systems and other changes that will be required to allow them to meet the requirements. This may be particularly onerous for entities that do not currently report under the *Corporations Act 2001* who will require a much longer lead time to ensure they have the systems and resources available to meet the requirements.

We also note that we believe that the consultation period for this legislation and other consultative documents mentioned above is not long enough, particularly given the holiday period, to allow all affected parties to contribute. We appreciate that there is a required lead time to get the legislation in place so that the ACNC can be established, however, we would question whether some aspects of the legislation, such as the reporting and governance requirements could have been added at a later date after more intense consultation with affected parties.

Our recommendation would be to establish the ACNC on 1 July 2012, but for that to occur under legislation that deals only with the establishment and powers of the ACNC. Consultation could then continue for further legislation regarding the operations of the ACNC and the responsibilities and duties of registered entities, with the aim of a start date no earlier than 1 July 2013. This would also allow the Commonwealth government more time to consider how to harmonise existing State legislation governing the sector.

In addition to the time that will be needed by entities to implement the proposed legislation, there will be high costs incurred in doing so, as well as in ongoing compliance. Major costs will be incurred in obtaining additional resources, systems modifications and audit costs. This will be particularly burdensome for charities not currently reporting under the *Corporations Act 2001*.

The proposed legislation appears to be intended to apply to all NFPs, but the Fact Sheet supplied with the exposure draft indicates that the ACNC functions will initially only apply to charities. The legislation itself does not make specific reference to charities. While we support this staged approach to adoption of reform, the legislation itself needs to clarify which organisations are within its scope at various application dates.

Our final general comment would be that we cannot see from the proposed legislation and other consultation documents how there will be a reduction in duplication of reporting requirements within the proposed timeframe. We are particularly concerned that until constitutional issues have been addressed, charitable entities that currently report outside of the *Corporations Act 2001* will have another layer of reporting requirements added for the 30 June 2013 financial year. Similarly, it is not clear how the duplication of reporting for entities with grant acquittal reporting obligations will be addressed.

We will now address some more specific issues concerning registration and reporting and auditing.

Registration

We support the proposals for the registration process in general. We do, however, question how the proposed legislation may be affected in the future by any future statutory definition of charity. We note that the Explanatory Materials refer to the definition of charity being based on the common law definition. The Fact sheet supporting the October 2011 Consultation Paper *A Definition of Charity* noted that the statutory definition would be applied from 1 July 2013, however this does not appear to be addressed in the proposed ACNC legislation. We understand that those entities currently endorsed by the Australian Tax Office (ATO) as tax exempt will initially be automatically registered with the ACNC, but these entities will need to reassess this subsequently and the proposed legislation is not clear as to how this will change.

Reporting and auditing

This is our main area of focus in the proposed legislation. In addition to the implementation issues which we noted above we have some specific concerns regarding aspects of the legislation as follows:

Section 55-5 Annual information statements

As the contents of information statements are yet to be finalised we do not have specific comments but do recommend that any requirements be considered in light of whether they would be onerous, particularly for small entities who are not required to prepare financial statements.

Section 55-10 Tiered reporting

We support the application of a tiered structure for determining which entities are required to prepare financial statements. However we believe that the current threshold levels which were introduced in 2010 for companies limited by guarantee are too low, particularly when compared with those used to differentiate public companies limited by shares.

Section 55-20 Financial statements and notes

This section refers to a requirement for financial statements of medium and large registered entities (as well as small entities with deductible gift recipient status) to comply with accounting standards. In terms of financial reporting this implies that these registered entities would be required by the proposed legislation to prepare "general purpose financial reports", which are currently only required for 'reporting entities' (both terms are defined in the accounting standards). These general purpose financial reports would comply with all requirements of all

applicable Australian Accounting Standards. The "reporting entity" concept is used in both the for-profit and not-for-profit sectors to determine whether financial statements should be prepared as "general purpose" or "special purpose". Further there is no reference as to whether the Reduced Disclosure Regime would be available to registered entities.

For many entities a requirement to prepare general purpose financial reports would be onerous and inconsistent with current practice. We understand that many charities would have users dependant on general purpose financial reports, however others with less public interest may currently prepare special purpose financial reports which are sufficient for their users' needs. Special purpose financial statements are prepared using less disclosure requirements than are used in preparing general purpose financial statements. We also note that when the legislation is expanded to capture other not-for-profit entities a requirement to prepare general purpose financial reports would in many cases be unnecessary.

We do note that the Fact Sheet *The ACNC Exposure Draft Reporting and Auditing* and the Explanatory Materials refer to special purpose financial reporting, however this appears to refer to requests by the ACNC for information above and beyond that provided in the general purpose financial statements.

In summary, we do not agree with mandating the preparation of 'general purpose financial reports' as this will increase substantially the costs of preparation and audit of financial statements, particularly for small and medium sized not-for-profits. Rather we recommend a requirement to comply with accounting standards, including application of the reporting entity concept.

Section 55-60 Auditor's report on annual financial report

We support the audit requirements in the proposed legislation and agree that they should be consistent with those for companies limited by guarantee in the *Corporations Act 2001*. One area of concern however is the requirement in 55-60(4)(a) for the audit report to describe "any defect or irregularity in the financial report". We believe this is a very broad requirement which could be construed as a requirement to report on matters which would not normally be included in an audit report under Australian Auditing Standards where the auditor forms the view that the defect or irregularity is material.

We would recommend consideration of replacing this requirement with an obligation similar to that imposed on auditors under s311 of the *Corporations Act 2001*. Under Section 311 the auditor will be required to report to the regulator where they have reasonable grounds to suspect a contravention of the Act, and it is significant, or they have reasonable grounds to suspect a contravention of the Act, that is not significant but will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors (or responsible individual).

We also note what we believe to be a typographical error in 55-60(4)(b) where there is a reference to 55-40(2) which we believe should be a reference to 55-20(3).

If you have any questions or would like to further discuss any of these comments, please contact me directly via email at jane.meade@rsmi.com.au or by phone on 02 8226 9518.

Yours sincerely



Jane Meade
National Technical Partner.

